TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 272

Andrew W. Mellon,
~~JAMES C. DAVIS~~, DIRECTOR GENERAL, AGENT U. S. RAILROAD ADMINISTRATION (GRAND RAPIDS AND INDIANA RAILROAD), APPELLANT

vs.

MICHIGAN TRUST COMPANY, RECEIVER OF RATHBONE MANUFACTURING COMPANY

APPEAL FROM AND ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED FEBRUARY 10, 1925
CERTIORARI GRANTED APRIL 13, 1925

(30862)

3466

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924.

No. 897

JAMES C. DAVIS, DIRECTOR GENERAL, AGENT U. S. RAILROAD ADMINISTRATION (GRAND RAPIDS AND INDIANA RAILROAD), APPELLANT

vs.

MICHIGAN TRUST COMPANY, RECEIVER OF RATH-BONE MANUFACTURING COMPANY

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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In the United States District Court for the Western District of Michigan, Southern Division, in equity

Bill of complaint

Filed Dec. 6, 1919

To the District Court of the United States for the Western District of Michigan, Southern Division, in equity:

White Sewing Machine Company, a corporation organized under the laws of the State of Ohio, and a resident of the city of Cleveland in the State of Ohio, and a citizen of the State of Ohio, and William G. Renwick, of Chicago, Illinois, a citizen of the State of Illinois, in their own behalf, and in behalf of such other creditors of the defendant hereinafter named, and other persons in interest, as shall elect to join in the prosecution of this suit or in the benefits of this suit, bring this, their bill of complaint, against Rathbone Manufacturing Company, of the city of Grand Rapids, Michigan, a corporation organized under the laws of the State of Michigan, and a citizen of the State of Michigan, and a resident of the Western District and Southern Division thereof, defendant herein, and thereupon plaintiffs complain and say:

I

Plaintiff White Sewing Machine Company, is a corporation under the laws of the State of Ohio, and has its principal office and place of business at Cleveland in said State of Ohio, and has for many years last past and during that time it has been and now is a citizen of said State of Ohio. Plaintiff William G. Renwick, resides in Chicago, in the State of Illinois, where he has resided for many years last past, and during that time he has been and now is a citizen of said State of Illinois.

The defendant Rathbone Manufacturing Company, is a corporation organized and existing under and by virtue of the laws of the State of Michigan and having its principal place of business
2 in the city of Grand Rapids, Kent County, Michigan, and is a citizen of the State of Michigan, and a resident of the Western District, Southern Division thereof, and of no other State or District within the meaning of the laws fixing and defining the jurisdiction of this honorable court. The principal business of defendant has for a long time past been and still is the manufacture and sale of gray iron castings.

II

Plaintiff White Sewing Machine Company is a creditor of defendant in the amount of $3,650.00, or thereabouts, for moneys ad-

vanced to defendant and for claims on open account against defendant, all incurred during the last six months or thereabouts, $650,000 or thereabouts of this amount is on open account and is past due and the balance is evidenced by the note of defendant which is now due. Plaintiff William G. Renwick is a creditor of defendant in the amount of $1,000.00 or thereabouts, for services rendered to the defendant during the last six months or thereabouts.

III

The authorized capital stock of defendant is $135,000, of which $75,000 is common stock and $40,000 preferred stock. Of this capital stock there is outstanding common stock to the amount of $60,000 and preferred stock to the amount of $27,060. During the past six years defendant has been doing a business of $100,000 or thereabouts per year, and it has a plant in which it can carry on a large and profitable business. During the last few months it has been doing a business of $12,000 per month, as plaintiffs are informed and believe. It employs at its plant from forty to fifty employees. During a considerable portion of the time during the last several years defendant has been conducting business at a substantial loss. It has borrowed from the banks in Grand Rapids and from its stockholders large sums of money to wit, over $100,000, in order to pay its merchandise accounts and other indebtedness and its losses in operation. Most of the paper representing this money borrowed has been endorsed or guaranteed by Alfred D. Rathbone III, one of the stockholders and directors, and the president of defendant, and such endorsement has been necessary in order to negotiate said paper. The said Alfred D. Rathbone III has refused and does refuse to make any further endorsements on the paper of defendant, so that it
3 is impossible for defendant to borrow further sums with which to meet its indebtedness both for moneys borrowed and its other indebtedness. The defendant has always relied upon said Rathbone to furnish it with money as aforesaid, and is without credit to procure additional sums elsewhere, and it is unable to pay its debts in the ordinary course of its business as persons in trade usually do and are required to do. Its cash on hand is only $100 or thereabouts, and it has practically no quick assets whatever. It has accounts receivable of $8,540 or thereabouts, but is unable to collect the same or any considerable portion thereof immediately.

IV

The indebtedness of defendant, exclusive of its indebtedness on account of capital stock, amounts to $140,000 or thereabouts, of which a large portion is now due and payable, and the balance, being represented by notes of the defendant, will fall due at various times within the near future. Defendant has no money with which to pay the said indebtedness and no means of raising the same. Plaintiffs

are informed and believe, and therefore aver on such information and belief, that as a going concern the value of the assets of the defendant exceeds the amount of its liabilities, but that a stoppage or interruption of its business would result in a very great depreciation of the value of its plant and assets, making it improbable that defendant could pay its debts.

V

Plaintiffs are informed and believe, and therefore on such information and belief aver, that various creditors of defendant are demanding payment of their indebtedness; that judgments have recently been taken against defendant in the aggregate of, to wit, $5,000, and that various other suits have been commenced against defendant for indebtedness aggregating, to wit, $5,000.00; that executions are threatened against the property of defendant on account of the said judgments; and that should the creditors of said defendant be allowed to proceed upon the various debts due and owing to them, in an endeavor to parcel out defendant's property among themselves, it would result in ruining the business of defendant and in a very great diminution of the value of the assets to
4 which creditors would have to look for payment, and would almost certainly result in the insolvency of defendant and in great loss to creditors. The assets of said company will be subject to attachment or execution, and in the event of forced sales would bring very much less than their fair and reasonable value, all of which would be of great detriment to plaintiffs and the other creditors of said defendant. From investigations which plaintiffs have made of the affairs of defendant, and from information which they have received in regard thereto, they believe, and therefore aver, that if the assets of defendant are properly handled and conserved by a receiver to be appointed by this court the creditors of said defendant can probably be paid in full, and that there is the possibility that there may be a surplus left for the stockholders; but that unless they are so handled and conserved there will probably be great loss and waste occasioned by litigation, stoppage of business, forced sales, and other causes which will result in the insolvency of defendant. That unless the business and property of defendant is taken possession of by this court and administered by a receiver, there is great danger that those creditors whose indebtedness is not yet due and who can not bring suit at this time are liable to lose the whole or a portion of their indebtedness. If plaintiffs should commence suit on their claims it would probably precipitate still other suits against defendant and result in the immediate closing of its business before either of them could recover judgment in said suit. That the claim of creditors who are citizens and residents of other States than the State of Michigan amount to considerably more than $3,000.

VI

The defendant has a well-established business in grey iron castings and is manufacturing and selling to various responsible concerns throughout the United States. Among others it is manufacturing and selling to plaintiff White Sewing Machine Co. legs for sewing machines. It is manufacturing and selling to Cheney Talking Machine Co. turntables and motor frames. It is manufacturing and selling to Advance-Rumely Co. and to Delta-Star Manufacturing Co. and others grey iron castings. Plaintiffs are informed, and on such information aver, that the business of said defendant is now being operated at a small profit and that in the opinion of plaintiffs it can be so operated under present conditions, and that its operation under present conditions is for the best interests of the defendant and of all defendant's creditors, in that a suspension of operations and the breaking up of the business would result in a great sacrifice of the assets of the defendant as hereinabove stated.

VII

The matter in dispute in this cause exceeds, exclusive of interest and costs, the sum or value of three thousand dollars.

Plaintiffs therefore ask the aid of this court in the premises and pray as follows:

1. That said defendant Rathbone Manufacturing Company may full, true and perfect answer make, without oath, to all and singular the matters and things hereinbefore stated.

2. That an accounting may be had and taken between said defendant and its creditors and its assets marshalled and that the court determine what creditors are entitled to be paid therefrom respectively, and that plaintiffs and other creditors of said defendant may be paid what is justly due to them.

3. That defendant may be forthwith enjoined from receiving any debts due it and from paying or transferring any of its moneys and effects, except by order of this court, or from in any way interfering with the possession and operations of the receiver to be appointed in this cause.

4. That a writ of injunction may issue out of and under the seal of this court, to be directed to the said defendant, its officers, servants, and agents, and each and every of them, enjoining and restraining them and each of them from collecting and receiving any debts due to defendant, and from paying, selling, assigning, or transferring any of the estate, money or funds, lands, tenements, or effects of said defendant, or interfering with the receiver to be appointed in this cause.

5. That a receiver may be appointed for said defendant, with the usual powers of receivers in equity in such causes, including power to conduct the business of defendant for such time and in such manner as in the judgment of the court may be for the best interest of defendant's creditors.

6. That the assets of defendant and the rights of plaintiffs and the other creditors of said defendant may be ascertained, and that this court fully administer the funds and property of said
6 defendant, and enforce the liens and rights of all the creditors thereof as the same may be finally ascertained.

7. That the writ of subpoena to be directed to the said defendant may be issued out of this court and under the seal thereof, commanding it that at a certain time and under a certain penalty to be therein specified, it shall be and appear before this honorable court, then and there to answer the premises and to abide by the order and decree of the court herein.

8. That plaintiffs may have such other and further relief in the premises as the nature of the case may require and as may be agreeable to equity and good conscience.

And plaintiffs will ever pray, etc.

WHITE SEWING MACHINE CO.
By W. W. CHASE, *President.*
WM. G. RENWICK.

M. B. & H. H. Johnson
Solicitor and of Counsel for Plaintiffs.
1009 American Trust Bldg., Cleveland, Ohio.

[Sworn to by W. W. Chase and Wm. G. Renwick. Jurat omitted in printing.]

7 In United States District Court

Answer

Filed Dec. 6, 1919

Rathbone Manufacturing Company, the defendant above named, for answer unto the bill of complaint in said cause, says that the allegations therein contained are true; and it does hereby consent to the appointment of a receiver as in said bill of complaint prayed.

RATHBONE MANUFACTURING CO.
By A. D. RATHBONE,
President.

THOMAS P. BRADFIELD,
Solicitor and of Counsel for Defendant.
843 Michigan Trust Co. Bldg., Grand Rapids, Michigan.

8 In United States District Court

Extract from order appointing a receiver

Dec. 6, 1919

The Michigan Trust Company, a corporation organized under the laws of the State of Michigan, and having its office and principal

place of business in the city of Grand Rapids in said State, be and is hereby appointed receiver of said Rathbone Manufacturing Co., defendant herein, and of all its property and assets of every kind, real, personal, and mixed, wherever the same may be situated; and the said receiver is hereby vested with all the property and rights of every kind whatsoever and wherever situated, both legal and equitable, of said defendant; and is also vested with full power and authority to demand, sue for, collect, receive and take into its possession all the goods, chattels, rights, credits, moneys and
9 effects, lands and tenements, books, papers, choses in action, bills, notes, plants and equipment, and property of any and every kind and description belonging to said defendant, or to which it may be entitled; to collect the rents, issues, income, profits, and revenues of all such property, or accruing to defendant, and to institute suits at law or in equity for the recovery of any assets, property, damages or demands of said defendant, and to prosecute or defend any suits now pending against said defendant, and, subject to the supervision of this court, to compound and settle with any debtor or creditor of said defendant, or with persons having possession of any of its property, or in any way responsible at law or in equity to defendant or to said receiver, upon such terms and in such manner as said receiver shall deem just and beneficial to said defendant, and in case of mutual dealings between said defendant and any persons, to allow just set offs in favor of such persons in all cases in which the same ought to be allowed according to law and equity; and to sell, convey, and assign any and all of the real and personal estate of the said defendant, subject to the supervision and order of this court, and to hold all moneys and securities for money arising from such sale which it shall collect or receive by virtue of said office, subject to the order of this court; and the receiver is hereby further vested with all the usual rights and powers and made subject to all the usual duties of receivers in such cases; and is further authorized to employ as its attorneys and counsel the firm of Knappen, Uhl & Bryant, of Grand Rapids, Michigan.

And it is further ordered that the receiver be and is hereby authorized and directed, until the further order of this court, to continue the business of said defendant company without interruption and fill its contracts (other than the payment of indebtedness of said defendant) made by said defendant or the receiver thereof, until the further order of this court in the premises; to pay out all moneys coming into its hands from time to time as such receiver for the necessary supplies for the purposes aforesaid or for the rental of premises used in said business; to employ and pay all needful agents and servants, and generally to do all acts and things proper and necessary to be done to protect the property and assets of which it is hereby appointed receiver, and to continue the business as herein ordered, with leave to apply from time to time for instructions touching all and singular its rights, powers and duties in the premises.

In United States District Court

Proof of claim

10

Filed May 15, 1920

Schedule "A."

RATHBONE MANUFACTURING COMPANY

Grand Rapids, Michigan

To the Grand Rapids & Indiana Railroad, Dr.,

For freight, demurrage and switching charges on shipments as follows:

Date	W. B. No.	From—	To—	Articles	Weight	Rate	Amount
1/13/17	5111	Cincinnati, Ohio	Grand Rapids, Mich.	Iron	67200	$4.10	$132.00
2/15/17	1383	Louisville, Ky	Grand Rapids, Mich.	Iron	71680	4.40	140.80
3/ 8/17	4329	Hestead, Pa	Grand Rapids, Mich.	Coke	57600	2.50	72.00
3/24/17	3155	Louisville, Ky	Grand Rapids, Mich.	Iron	56000	4.40	110.00
3/27/17	2017	Derry I, Pa	Grand Rapids, Mich.	Coke	57200	2.50	71.50
4/16/17	2010	Vincennes, Ind	Grand Rapids, Mich.	Iron	57000	28.4	82.22
4/20/17	7056	Louisville, Ky	Grand Rapids, Mich.	Iron	56000	4.40	110.00
4/20/17	2017	Vincennes, Ind	Grand Rapids, Mich.	Iron	55800	2.84	70.74
4/24/17	3026	Pinmer, Pa	Grand Rapids, Mich.	Coke	62880	2.50	78.50
4/24/17	29	Toledo, Ohio	Grand Rapids, Mich.	Iron	83000	1.68	62.25
4/24/17	2017	Vincennes, Ind	Grand Rapids, Mich.	Iron	59300	2.84	74.80
4/26/17	2020	Vincennes, Ind	Grand Rapids, Mich.	Iron	58200	2.84	73.78
5/ 5/17	11615	Finley, Pa	Grand Rapids, Mich.	Coke	83700	2.50	104.63
5/13/17	491	Finley, Pa	Grand Rapids, Mich.	Coal	59600	2.50	74.50
5/14/17	14061	Grand Rapids, Mich	Pittsburgh, Pa	Drums	300	30.5	.92
5/24/17	2166	Cincinnati, Ohio	Grand Rapids, Mich	Riddles	100	L.	.45
5/31/17	1632	Grand Rapids, Mich	Lafayette, Ind	Casting	10	L.	.43
6/ 2/17	22	Cleveland, Ohio	Grand Rapids, Mich.	Machine	500	.37	1.85
6/12/17	8286	Waverly Tr., N. J	Grand Rapids, Mich.	Casters	450	50.4	2.16
6/18/17	2507	Louisville, Ky	Grand Rapids, Mich.	Iron	50000	4.40	110.00
6/25/17	20021	Grand Rapids, Mich	Clifton Forge, Va	Grates	75	L.	.37
6/31/17	21020	Grand Rapids, Mich.	Pittsburgh, Pa	Carboys	300	24.2	.73
7/16/17	0301	Grand Rapids, Mich.	New York, N. Y	Cans	200	75.6	1.51
7/16/17	19	Shirnock	Grand Rapids, Mich.	Sand	56800	1.84	52.26
7/25/17	35	Shamrock, Ohio	Grand Rapids, Mich.	Sand	56700	1.84	52.16
2/27/17	1967	Cincinnati, Ohio	Grand Rapids, Mich.	Facings	1390	.20	2.78
8/ 4/17	430	Grand Rapids, Mich	Brooklyn, Ohio	Carboys	200	22.1	.44
8/ 6/17	31	Pittsburgh, Pa	Grand Rapids, Mich.	Facing	980	22.1	2.19
8/ 9/17	285	Grand Rapids, Mich	Eddyville, Ia	Castings	40	82.3	.82
8/13/17	1890	Chicago, Ill	Grand Rapids, Mich.	Furnace	24000	12.6	30.24
8/22/17	5890	Topeka, Kansas	Grand Rapids, Mich.	Grate	210	100	2.10
8/30/17	33	Shinrock	Grand Rapids, Mich.	Sand	98100	1.84	90.25
8/30/17	15637	E. St. Louis, Ill	Grand Rapids, Mich.	Drum	30	L.	.68
8/31/17	2421	Louisville, Ky	Grand Rapids, Mich.	Iron	60000	4.40	117.86
9/ 7/17	7041	Grand Rapids, Mich	Brooklyn, Ohio	Carboys	170	36.8	.63
9/10/17	207	Michigan City	Grand Rapids, Mich.	Iron	62000	2.22.2	121.74
9/13/17	74	Follansbee, W. Va	Grand Rapids, Mich.	Steel	1345	22.1	2.97
9/21/17	927	Sturgis, Mich	Grand Rapids, Mich.	Sand	88000	121.4	88.00
9/20/17		Grand Trunk R. R	Rathbone Mfg. Co	Scrap	Switching		6.00
9/28/17	618	Hamilton, Ohio	Grand Rapids, Mich	Wire	100	.53	.53
10/ 1/17	4	E. Chicago, Ind	Grand Rapids, Mich	Acid	572	47	2.69
10/ 5/17	980	Chicago, Ill	Grand Rapids, Mich	Radiator	100	1.27	1.27
10/11/17	1	Lissle Gen, Pa	Grand Rapids, Mich.	Coke	52800	26.5	69.96
10/13/17	13132	Grand Rapids, Mich.	Brooklyn, Ohio	Drums	200	35.5	.71
10/14/17	12	Salem, Pa	Grand Rapids, Mich.	Coke	74800	26.5	99.11
10/16/17	728	Dayton, Ohio	Grand Rapids, Mich.	Grates	1170	.35	4.10
10/19/17	3472	Chicago, Ill	Grand Rapids, Mich.	Brushes	100	L.	.47
11/ 2/17	90	Grand Rapids, Mich.	Columbus, Ohio	Covers	15	167.5	1.68
						Tax.	.05
11/ 5/17	802	Buffalo, N. Y	Grand Rapids, Mich.	Grates	100		.61
						Tax.	.02
11/12/17	89	Grand Rapids, Mich.	Leonardo, N. J	Castings	20	91.5	.92
						Tax.	.03
11/24/17	1053	Grand Rapids, Mich.	Canton, Ohio	Shanks	40	.57	.57
						Tax.	.02
12/ 8/17	5	Delhi, Ohio	Grand Rapids, Mich.	Sand	49700	2.60	49.70
						Tax.	1.49

Date	W. B. No.	From—	To—	Articles	Weight	Rate	Amount
12/12/17	1703	Chicago, Ill	Grand Rapids, Mich	Grates	100	$0.47	$0.47
						Tax.	.01
12/15/17	517	Grand Rapids, Mich	Hobbs, Indiana	Castings	30	54	.51
						Tax.	.02
12/17/17	17017	Grand Rapids, Mich.	Grasselli, Ind	Carboys	90		.47
						Tax.	.01
12/21/17	313	Seymour, Indiana	Grand Rapids, Mich.	Sand	58500	202.2	58.50
						Tax.	1.76
12/28/17	881	Grand Rapids, Mich.	Cuba, N. D	Fireplaces	300	112	4.36
						Tax.	.10
1/ 5/18	165	Cincinnati, Ohio	Grand Rapids, Mich	Facing	2500	.27	6.75
				Shovels, etc.	125	.339	.42
				Laddle, etc.	115	.54	.62
						Tax.	.24
1/ 8/18	203	Dubuque, Ia	Grand Rapids, Mich	Flask	310	44.5	1.38
						Tax.	.04
1/11/18	889	Chicago, Ill	Grand Rapids, Mich	Scale	1200	40	4.80
						Tax.	.14
1/12/18	5662	Clare, Ohio	Grand Rapids, Mich				2.00
					Recon-sign-ing.		
1/19/18		W. O. Hughart	Rathbone Mfg. Co		Switch-ing.		4.12
1/21/18	560	Richmond, Ind	Grand Rapids, Mich	Pig iron	64960	105.8	30.68
						230.2	66.76
						Tax.	2.92
2/ 8/18	363	Cincinnati, Ohio	Grand Rapids, Mich	Facing	1270	27	3.43
						Tax.	.10
2/11/18	1031	Grand Rapids, Mich.	Jamesport, Mo	Fireplace	225	99	2.23
						Tax.	.07
2/ 8/18	250	Muskegon, Mich	Grand Rapids, Mich	Iron	61400	100	27.41
						Tax.	.74
						R/C.	5.09
2/ 9/18	269	Richmond, Ind	Grand Rapids, Mich.	Iron	109760	98.1	48.07
						237.9	116.37
						Tax.	4.94
2/13/18	454	Richmond, Ind	Grand Rapids, Mich			R/C.	2.00
2/15/18		Grand Rapids, Mich.	Rathbone Mfg. Co	Iron demur-rage.			2.00
2/19/18	701	Grand Rapids, Mich.	Ft. Collins, Col	Castings	40	157	1.37
						Tax.	.03
2/22/18	22025	Grand Rapids, Mich.	Punxsutawney, Pa	Fireplace	240	.73	1.75
						Tax.	.03
2/23/18	23048	Grand Rapids, Mich.	Ft. Collins, Col	Fireplace	200	182	3.64
						Tax.	.11
3/ 1/18	16	McGibson, Ind	Grand Rapids, Mich	Facing	729	23.5	1.71
						Tax.	.05
3/12/18	12042	Grand Rapids, Mich.	Forest Raleigh, N. C	Damper	40	110	1.10
						Tax.	.03
3/16/18	235	Sidney, Ohio	Grand Rapids, Mich	Frame	100		.81
						Tax.	.02
3/22/18		Grand Rapids, Mich.	Rathbone Mfg. Co	Iron demur-rage.			4.00
3/22/18		Grand Rapids, Mich.	Rathbone Mfg. Co	Iron demur-rage.			2.00
3/26/18	1582	Cincinnati, Ohio	Grand Rapids, Mich	Siloun	780	36	2.08
						Tax.	.06
3/29/18	7282	Minneapolis, Minn	Grand Rapids, Mich	Howe	60	M.	.93
						Tax.	.03
4/ 1/18	1034	Grand Rapids, Mich.	Mills, N. Mexico	Grate	90	179	1.79
						Tax.	.05
4/ 1/18	1059	Grand Rapids, Mich.	Lenexa, Kan	Grate	90	116	1.16
						Tax.	.03
4/13/18	466	Grand Rapids, Mich.	Rantorel, Ill	Mise	140	L.	.54
						Tax.	.02
4/16/18	1450	Gibson, Indiana	Grand Rapids, Mich.	Grate	225	42.2	3.12
						Tax.	.09
4/17/18	609	Cincinnati, Ohio	Grand Rapids, Mich.	Grate	50	54	.27
				Facing	1200	27	3.24
						Tax.	.11
4/17/18	284	Duluth, Minn	Grand Rapids, Mich.	Fireplace		75	.93
						Tax.	.03
4/29/18	5200	Chicago, Ill	Grand Rapids, Mich.	Iron	94080	4.15	236.43
					R/C.		2.00
					Tax.		7.15
					Tax.		3.85
4/30/18	10026	E. St. Louis, Ill	Grand Rapids, Mich.	Iron	64900	4.40	128.40
5/ 6/18	42	Rockwood, Tenn	Grand Rapids, Mich.	Iron	70400	4.15	145.25
					V. chgs.		3.00
					Tax.		4.45
5/13/18	1872	Dayton, Ohio	Grand Rapids, Mich.	Grate	100	.53	.53
						Tax.	.02
5/16/18	45	Rockwood, Tenn	Grand Rapids, Mich.	Iron	87360	3.95	154.05
						Tax.	4.62

Date	W. B. No.	From—	To—	Articles	Weight	Rate	Amount
5/17/18	53	Rockwood, Tenn...	Grand Rapids, Mich.	Iron.....	69440	$3.95	$122.45
						Tax.	3.67
5/17/18	52	Rockwood, Tenn...	Grand Rapids, Mich.	Iron.....	67200	3.95	118.50
						Tax.	3.56
5/24/18	1427	Grand Rapids, Mich.	Orangeburg, S. C....	Grates.....	50	152	1.52
						Tax.	.05
5/25/18	2041	Frankford, Pa.....	Grand Rapids, Mich.	Emery.....	640	42.5	2.72
						Tax.	.08
5/28/18	1822	Cincinnati, Ohio....	Grand Rapids, Mich.	Facing.....	1190	27	3.21
						Tax.	.10
5/31/18		Grand Rapids, Mich.	Rathbone Mfg. Co...	Iron demurrage.			3.00
						Tax.	.09
6/ 7/18	1018	Cincinnati, Ohio....	Grand Rapids Mich.	Carboys....	650	.54	3.51
						Tax.	.11
6/14/18	2161	Cincinnati, Ohio....	Grand Rapids, Mich.	Crates.....	100	.35	.35
						Tax.	.01
6/19/18		Grand Rapids, Mich.	Rathbone Mfg. Co...	Coke demurrage.			6.00
						Tax.	.18
6/20/18	1850	Kalamazoo, Mich....	Grand Rapids, Mich.	Heads.....	20	L.	.41
						Tax.	.01
7/ 3/18	175	Grand Rapids, Mich.	Warren, Minn.....	Misc.....	75	L.	1.69
						Tax.	.05
7/10/18	645	Orient Wks. Pa....	Grand Rapids, Mich.	Coke.....	76700	330	126.56
						Tax.	3.80
7/18/18	232	Grand Rapids, Mich.	Hamburg, N. J.....	Castings....	30	L.	1.14
						Tax.	.03
7/21/18	1780	Orient Wks. Pa....	Grand Rapids, Mich.	Coke.....	55000	330	90.75
						Tax.	2.72
7/21/18	183	Orient Wks., Pa....	Grand Rapids, Mich.	Coke.....	81500	330	134.48
						Tax.	4.03
7/29/18	29018	Grand Rapids, Mich.	New York, N. Y....	Irons.....	40	L.	1.04
						Tax.	.03
4/ 2/19		P. L. Car 561540....	.....	Car service			6.00
						Tax.	.18
9/22/19	1117	Tonawanda, N. Y....	Grand Rapids, Mich.	Iron sup. bill			.37
9/26/19	1466	Tonda, N. Y.....	Grand Rapids, Mich.	Iron sup. bill			10.51
Total.....							$3,953.46

13 Schedule "B."

RATHBONE MANUFACTURING CO., GRAND RAPIDS, MICH.

To the Grand Rapids & Indiana Railroad, Dr.

To value of 33,300 pounds of pig iron unloaded and converted by Rathbone Manufacturing Co. from car P. L. E. 45303, on, to wit, September 27th, 1919, at Grand Rapids, Michigan, which said pig iron so unloaded and converted by Rathbone Manufacturing Co. was at the time thereof the property of the Donner Steel Company of Buffalo, N. Y., and was then within the custody and control of Walker D. Hines, Director General of Railroads, United States Railroad Administration, Grand Rapids & Indiana Railroad, under the provisions of an order bill of lading, by the terms of which the Rathbone Manufacturing Company were entitled to said pig iron only upon the purchase price thereof and the surrender of the said order bill of lading therefor, and which said pig iron the said Rathbone Manufacturing Company removed from said car and converted without surrender of the said bill of lading, and by reason whereof, the said Director General of Railroads, Grand Rapids & Indiana Railroad, became liable to said Donner Steel Company for the value of said pig iron and on February 23, 1920, paid the claim of the said Donner Steel Company made on account of the conversion thereof in the amount of $527.74. $527.74

14 In United States District Court

Affidavit of J. M. Metheany

Filed May 15, 1920

STATE OF MICHIGAN,
County of Kent, ss:

On the 14th day of May, A. D. 1920, came J. M. Metheany, of Grand Rapids, in the county of Kent, State of Michigan, who, being duly sworn, deposes and says that he is auditor, Grand Rapids & Indiana Railroad, Walker D. Hines, Director General, United States Railroad Administration, and makes this affidavit for and on behalf of Walker D. Hines, Director General, United States Railroad Administration, Grand Rapids & Indiana Railroad, and is authorized so to do, that the above-named Rathbone Manufacturing Co., against which the bill of complaint in this cause was filed, for the appointment of a receiver, and for other relief, at and before the filing of said bill of complaint and the appointment of a receiver herein, was and still is justly and truly indebted to said Walker D. Hines, Director General, United States Railroad Administration, Grand Rapids & Indiana Railroad, in the sum of four thousand five hundred eighty-one dollars and twenty cents ($4,581.20), upon certain open accounts of which true statements are hereunto annexed, set forth on Schedule "A"; that said debt became due on the twenty-sixth day of September, A. D. 1919, and draws interest at the rate of five per cent per annum from September 29, 1919; that the debt recited in Schedule "B" matured on and draws interest at the rate of five per cent per annum from September 28, 1919; that no part of said debt has been paid; that there are no set-offs or counterclaims to the same; that said claimant, Walker D. Hines, Director General, United States Railroad Administration, Grand Rapids & Indiana R. R., has not, nor has any person by his order, or to the knowledge or belief of said deponent for his use, had or received any manner of security for said debt whatever, and that no note has been received for said account, nor has any judgment been rendered thereon. The consideration of said debt was freight, demurrage, and switching charges on shipments on merchandise to and from Grand Rapids, Michigan, received and shipped by Rathbone Manufacturing Company as indicated on the statement, Schedule "A," and for the conversion of 33,300 pounds of pig iron on, to wit, September 27, 1919, as set forth on statement Schedule "B."

Claimant claims priority over other creditors on the indebt-
15 edness recited in Schedule "B" for the reason that the merchandise there referred to, when converted, was not the property of the Rathbone Manufacturing Co., and it belonged to the Donner Steel Co., and claimant, the carrier in custody, and was

fraudulently and wrongfully converted by the Rathbone Manufacturing Co.

The said claimant desires to come into and participate in this proceeding, and share with the complainant therein, in pursuance of the order made by the court on January 9th, 1920.

J. M. METHEANY.

Subscribed and sworn to before me this 14th day of May, A. D. 1920.

[SEAL.] A. L. PARMELEE,
Notary Public, Kent County, Michigan.

My commission expires June 19, 1922.

[File indorsement omitted.]

16 *Supplementary proof of claim*

Filed May 17, 1920

STATE OF MICHIGAN,
County of Kent, ss:

J. M. Metheany, being duly sworn, deposes and says that he is auditor of the Grand Rapids & Indiana Railroad, Director General, United States Railroad Administration, and makes this affidavit for and on behalf of said Director General, United States Railroad Administration, Grand Rapids & Indiana Railroad, and is authorized so to do.

That on the 15th day of May, 1920, said Director General, United States Railroad Administration, Grand Rapids & Indiana Railroad, filed in this cause with John S. Lawrence, master in chancery, proof of claim of the said Director General of Railroads, United States Railroad Administration, Grand Rapids & Indiana Railroad, sworn to by this deponent, against the above-named Rathbone Manufacturing Company, against which the bill of complaint in this cause was filed, for appointment of receiver and for other relief; that the amount of such claim as filed is $4,581.20 upon certain open accounts, true statements of which were annexed to the proof of claim referred to and filed as stated, which said indebtedness became due on the 26th day of September, 1919, and draws interest at the rate of five per cent per annum from September 29, 1919, no part of which indebtedness has been paid.

That the indebtedness for which claim was made in said proof of claim and the consideration therefor was freight, demurrage, and switching charges on shipments of merchandise to and from Grand Rapids, Michigan, received and shipped by the Rathbone Manufacturing Company on various dates between January 13, 1917, and September 26, 1919, inclusive, and for the value of 33,300 pounds of pig iron unloaded and converted by Rathbone Manufacturing Company on car P. L. E. 45303, on, to wit, September 27th, 1919, at Grand Rapids, Michigan, which pig iron was then within the custody and control of the Director General, United States Railroad Administration, Grand Rapids and Indiana Railroad; reference is

hereby made for greater certainty to the schedules of such in-
17 debtedness and the particulars thereof set forth in said proof of claim heretofore filed by this claimant May 15, 1920, the same being made a part hereof.

That the said Director General in said proof of claim so filed May 15, 1920, claimed priority over other creditors of said Rathbone Manufacturing Company on the indebtedness set forth in Schedule B of the said proof of claim, viz, the amount of $527.74, which accrued on account of the conversion of the 33,300 pounds of pig iron referred to.

Said Director General, United States Railroad Administration, Grand Rapids and Indiana Railroad, now supplements the proof of claim, filed May 15, 1920, with the additional claim that the entire indebtedness schedules, itemized, and recited in said proof of claim, filed May 15, 1920, amounting to the sum of $4,581.20 with interest thereon at five per cent per annum, from September 29, 1919, is entitled to priority and preference over all and any other indebtedness of said Rathbone Manufacturing Company and is entitled to priority of payment over the indebtedness of any other creditors of said Rathbone Manufacturing Company for the following reasons:

The said indebtedness recited in both Schedules A and B of said proof of claim, filed May 15, 1920, and to which this is a supplement, is an indebtedness due to the United States of America.

Deponent therefore makes and files this affidavit in support of and as a supplement to the proof of claim of the Director General of Railroads, United States Railroad Administration, Grand Rapids & Indiana Railroad, referred to and filed May 15, 1920, and claims priority and preference for the said claims of the said Director General of Railroads, United States Railroad Administration, Grand Rapids and Indiana Railroad, for the reasons therein and herein set forth. And this claimant desires to come into and participate in this proceeding and share with the complainant therein in pursuance of the orders of this court and in the proportions to which it is entitled by virtue of its claim of priority and preference.

J. M. METHEANEY.

Subscribed and sworn to before me this 17th day of May, A. D. 1920.

[SEAL.] A. L. PARMELEE,
Notary Public, Kent County, Mich.

My commission expires June 19, 1922.
18 [File indorsement omitted.]

In United States District Court

Extracts from report of Kirk E. Wicks, master in chancery

Filed May 17, 1923

2. That on February 3, 1923, I received from Hon. John S. Lawrence, master in chancery, the claims of Alfred D. Rathbone, III, Nos. 147 and 149, and the claims of Orcelia A. Rathbone, Nos. 150 and 151, together with transcript of testimony and certain exhibits

relating thereto, the original receipt for which is attached to the report of said John S. Lawrence, master in chancery.

3. That hearings were held, further testimony taken on the claims of Alfred D. Rathbone, III, and Orcelia A. Rathbone, and they were allowed by me as follows:

Alfred D. Rathbone, III	$120,095.93
Orcelia A. Rathbone	35,758.39

19 6. That within the time limited for filing objections to said reports and allowances, and on April 18, 1923, the receiver filed objections to the allowance of claim No. 77, Director General of Railroads (Grand Rapids & Indiana R. R. Co.), as a preferred claim, as appears on page 10 of the report of said John S. Lawrence, master in chancery. That on May 9, 1923, the claimant filed its answer to said objections, together with brief of E. M. Davis, Esquire, its counsel, and on May 13, 1923, Messrs. Knappen, Uhl & Bryant, counsel for receiver, filed their brief in support of the receiver's objections, all of which are hereto annexed, made a part hereof, and marked Exhibits "C," "D," and "E." That said matter was considered by me, and on May 14, 1923, I filed my opinion whereby the allowance of the claim as a preferred claim was set aside and the claim allowed as an ordinary claim for $4,522.95, which opinion is attached hereto, made a part hereof, and marked Exhibit "F."

RATHBONE MANUFACTURING CO.

Schedule No. I. Preferred claims

Total preferred claims allowed as per report of Hon. John S. Lawrence, master in chancery (p. 10)	$4,957.96
Less claim #77, Director General of Railroads (Grand Rapids & Indiana R. R. Co.), transferred to Schedule No. II, ordinary claims	4,522.95
(See opinion filed May 14, 1923) Net amount preferred claims	$435.01

A portion of the above claim #77, amounting to $3,953.46, was for outstanding freight charges; the remainder, $527.74, was for steel which claimant had in charge for transportation which was wrongfully appropriated and used by the Rathbone Mfg. Co.

20 RATHBONE MANUFACTURING CO.

Schedule No. II. Ordinary claims

Total ordinary claims allowed as per report of Hon. John S. Lawrence, master in chancery (p. 17)	$60,949.98
To which amount is added the following claims:	
#77, Director General of Railroads (Grand Rapids & Indiana R. R. Co.) transferred from Schedule I, preferred claims	4,522.95
#147, to #149, Alfred D. Rathbone, 3rd, Grand Rapids, Michigan	120,095.93
#150 & 151, Orcelia A. Rathbone, Grand Rapids, Michigan	35,758.39
Total	$221,327.25
Less claim #134, G. A. Wolf, Grand Rapids, Michigan, withdrawn (see withdrawal filed April 27, 1923)	100.64
Net amount ordinary claims	$221,226.61

In United States District Court

Receiver's objections to report of master in chancery, John S. Lawrence

April 18, 1923

Now comes the Michigan Trust Company, receiver of the above-named defendant, by its attorneys, Knappen, Uhl & Bryant, and objects to the draft of report of John S. Lawrence, master in chancery, as filed herein and approved by Kirk E. Wicks, master
21 in chancery on April 16, 1923, in the following particulars, namely:

1. The claim of Director General of Railroads, operating the Grand Rapids & Indiana Railroad Company, in the sum of four thousand four hundred eighty-one and 20/100 ($4,481.20) dollars should have been allowed as an ordinary claim and is not entitled to preference.

2. Page 10 of said report, viz: A list of allowance of preferred claims should be corrected to exclude said claim of Director General, namely, claim No. 77, which, together with interest, appears in said schedule of preferred claims in the sum of four thousand five hundred twenty-two and 95/100 ($4,522.95) dollars.

3. Said claim of Director General in the sum of four thousand five hundred twenty-two and 95/100 dollars ($4,522.95) should be allowed as an ordinary claim.

4. Paragraph 8 of said report at page 4 should be corrected in the following respect, namely:

Paragraph 8 states that the receiver withdrew its objections to certain listed claims, including said claim of Grand Rapids & Indiana Railroad Company, whereas your receiver states the fact to be that said objections of receiver to said claim were never formally withdrawn, as by reference to the files and reports herein more clearly appear.

THE MICHIGAN TRUST COMPANY,
Receiver of Rathbone Manufacturing Co.
By KNAPPEN, UHL & BRYANT,
Its Attorneys.

22 *Answer of Federal agent and Director General of railroads (Grand Rapids & Indiana railroad), to the receiver's objections to the report of the master in chancery*

The Federal agent designated by the President and the Director General of Railroads, United States Railroad Administration

(Grand Rapids & Indiana Railroad, by E. M. Davis, its attorney, comes and says in answer to the objections of the receiver to the draft of report John S. Lawrence, master in chancery, filed in this cause and approved by Kirk E. Wicks, master in chancery, April 16, 1923:

1. It denies the first objection and specifically says and urges to the master that the report of master in chancery, John S. Lawrence, of date April 16, 1923, approved by Kirk E. Wicks, master in chancery, upon the same date, allowing the claim of the Director General of Railroads, Grand Rapids and Indiana Railroad, of the sum of four thousand four hundred and eighty-one dollars twenty-one cents ($4,481.21) should not be amended nor revoked, for the reason that the said claim is entitled to priority in that it is a claim in favor of the United States Government. It is not a so-called "ordinary claim."

2. It denies that page 10 of the report referred to, which is a list of allowances of preferred claims, should be corrected in order to exclude the claim of the Director General (claim No. 77), which together with interest, appears in said schedule of preferred claims in the amount of four thousand five hundred twenty-two dollars ninety-five cents ($4,522.95).

3. It is denied that the claim of the Director General referred to should be allowed as an ordinary claim; it is and should be allowed as a preferred and priority claim by virtue of United States statute.

4. It is denied that paragraph 8 of the said report, at page 4, should be corrected in the respect urged by the receiver by its attorneys so that it might appear that objections of the receiver to the claim were withdrawn; and in this connection claimant shows that its attorney was advised by attorneys for the receiver under date of September 27, 1921, following the filing by claimant's
23 attorney of a brief in support of its claim under date of September 19, 1921, as follows:

"We have received your brief in the above case and have examined the law on this question and are of opinion that the railroad is entitled to priority as claimed herein.

"The above claim will therefore be allowed without further hearing."

following receipt of which communication attorney for the claimant advised John S. Lawrence, master in chancery, thereof and attorneys for the receiver did not present further objections until after date of April 18, 1923.

In support of its answer to the objections of the attorneys for the receiver to its claim, claimant's attorney submits the attached

brief, copy of which will be served upon the attorneys for the receiver.

DIRECTOR GENERAL, UNITED STATES RAILROAD ADMINISTRATION (GRAND RAPIDS AND INDIANA RAILROAD).
JAMES C. DAVIS,
Federal Agent.
By E. M. DAVIS,
Its Attorney.

8. Exceptions of claimant James C. Davis, Director General, to that portion of the report of the master in chancery relating to claim No. 77 of the Director General of Railroads (Grand Rapids & Indiana Railroad).

24 In United States District Court

Exceptions to master's report

Filed June 4, 1923

Now comes the above named claimant, James C. Davis, Director General and Agent, designated by the President, and excepts to that portion of the report of the master in chancery filed in this cause May 17, 1923, as follows:

"6. That within the time limited for filing objections to said reports and allowances, and on April 19, 1923, the receiver filed objections to the allowance of claim No. 77, Director General of Railroads (Grand Rapids & Indiana R. R. Co.), as a preferred claim, as appears on page ten of the report of said John S. Lawrence, master in chancery. That on May 9, 1923, the claimant filed its answer to said objections, together with brief of E. M. Davis, Esquire, its counsel, and on May 12, 1923, Messrs. Knappan, Uhl, and Bryant, counsel for receiver, filed their brief in support of the receiver's objections, all of which are hereto annexed made a part hereof and marked Exhibits 'C,' 'D,' and 'E.' That said matter was considered by me, and on May 14, 1923, I filed my opinion whereby the allowance of the claim as a preferred claim was set aside and the claim allowed as an ordinary claim for $4,522.95, which opinion is attached hereto, made a part hereof, and marked Exhibit 'F.'"

For the following reasons:

1. The master in chancery held in his opinion and conclusion that the claim referred to is not one entitled to priority notwithstanding the fact that it is a claim due the United States Government.

2. Claimant bases its right to preference on the entire claim on section 3466 of the Revised Statutes of the United States, which provides:

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

The report and recommendation of the master in chancery is in error in the disallowance of this claim as a preferred claim under the authority of such statute. The allegations of the bill of complaint filed for institution of the proceedings establish insolvency of the Rathbone Manufacturing Company within the meaning of the law affording priority to the United States Government. The allegations of this bill of complaint are admitted by the answer of the Rathbone Manufacturing Company. The record of the receivership with this court discloses that at the time of the filing of the bill of complaint the Rathbone Manufacturing Company was insolvent and that it was at the date of the filing of the master's report insolvent. Notwithstanding this insolvency of the Rathbone Manufacturing Company, the master had erroneously refused to allow the claim of the United States Government as a priority, and his report and ruling should be set aside and an order entered allowing claimant's claim as entitled to priority.

3. Claimant asserted priority for $527.74 of the claim filed (see schedule B), for the reason that the merchandise there referred to was converted by the Rathbone Manufacturing Company. This claim of preference has not been passed upon by the master, and claimant insisted that it is entitled to preference because of the fraudulent and unlawful act of the Rathbone Manufacturing Company in converting to its uses property within its custody.

Claimant prays that this court will fix a place and time for hearing its exceptions and for consideration of its claims and for review of the master's recommendation, and also for an order allowing to claimant the entire amount of its claim as presented as one entitled to priority because due the United States Government.

E. M. DAVIS.
Attorney for Claimant.

CLAPPERTON & OWEN,
Of Counsel.

26 In United States District Court

Stipulation as to insolvency

Filed Aug. 1, 1923

It is hereby stipulated and agreed by and between the receiver of said above-named defendant corporation and the said claimant, by their respective attorneys, that at the time for the filing of the petition for the appointment of a receiver of said defendant corporation the said corporation was, in fact, insolvent in that the aggregate of all its property and assets was not at a fair valuation sufficient in amount to pay the debts of said corporation, the said receiver, however, not admitting that said insolvency was at that time shown by the books of said defendant, or was then known by defendant or by plaintiffs. Dated: August 1st, 1923.

KNAPPER, UHL & BRYANT,
Attorneys for Receiver.
CLAPPERTON & OWEN,
Attorneys for Director General of Railroads.

In United States District Court

Order overruling exceptions

September 15, 1923

This cause having come on to be heard upon the exceptions of James C. Davis, Director General, agent (United States Railroad Administration, Grand Rapids & Indiana Railroad), to the report of the master in chancery relating to the claim of said James C. Davis, Director General, agent, after argument thereof, and upon due consideration thereof, it is

Ordered, that the exceptions of said claimant be and are hereby overruled and that the report of the master in chancery be and is hereby confirmed, and that claimant be and is hereby allowed the benefit of an exception to this order.

C. W. SESSIONS,
United States District Judge.

Dated September 13, 1923.

27 In United States District Court

Petition for appeal

Filed Oct. 15, 1923

The above-named claimant, James C. Davis, Director General, agent, United States Railroad Administration, Grand Rapids & Indiana Railroad, conceiving himself aggrieved by the order entered

on September 15, 1923, in the above-entitled proceeding, doth hereby appeal from said order to the Circuit Court of Appeals of the United States for the Sixth Circuit, and he prays that this, his appeal, may be allowed and that a transcript of the records and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Circuit Court of Appeals of the United States for the Sixth Circuit.

CLAPPERTON & OWEN,
Attorneys for Claimant and Appellant, 1019 Michigan Trust Building, Grand Rapids, Mich.

Dated October 13, 1923.

WESTERN DISTRICT OF MICHIGAN:

The foregoing claim of appeal hereby is allowed.

A. C. DENISON,
U. S. Circuit Judge.

Oct. 15, 1923.

In United States District Court

Assignments of error

Filed Oct. 15, 1923

Now comes James C. Davis, Director General, agent (United States Railroad Administration, Grand Rapids & Indiana Railroad), plaintiff in error, and herein makes and files this his assignments of error:

I. That the District Court erred in its order of September 15th, 1923, overruling the exceptions of said claimant to the report of the master in chancery, and confirming the report of the master in chancery, for the following reasons:

28 1

What the claim of said James C. Davis, Director General, was and is a preferred claim within the meaning of section 3466 of the Revised Statutes of the United States and should be allowed as a preferred claim, with priority as to payment over the ordinary claims filed against said estate.

2

That said claim of said James C. Davis, Director General, is a preferred claim within the meaning of said section 3466 of the Revised Statutes of the United States for the reason that at the time of the filing of the bill of complaint in said suit of the White Sewing Machine Company versus the Rathbone Manufacturing Company said Rathbone Manufacturing Company was insolvent and has committed an act of bankruptcy within the meaning of

said section 3466 in that because of insolvency a receiver was put in charge of the said Rathbone Manufacturing Company.

3

That at the time of the filing of the bill of complaint the said Rathbone Manufacturing Company was insolvent and committed an act of bankruptcy within the meaning of the said section 3466, U. S. Revised Laws, in that being insolvent it applied for a receiver for its property.

4

That appellant asserted priority for $527.74 of the claim filed for the reason that the merchandise therein referred to was converted by the Rathbone Mfg. Co., and that this claim of preference was not passed upon by the master, although appellant is entitled to preference because of the fraudulent and unlawful acts of the Rathbone Manufacturing Company in converting to its use this property within its custody.

CLAPPERTON & OWEN,
Attorneys for Appellant.

Dated October 15th, 1923.

29 [Citation in usual form showing service on Knappen, Uhl & Bryant, omitted in printing.]

30 In United States District Court

Precipe in transcript of record

Filed Nov. 7, 1923

And now comes the Director General of Railroads, claimant and appellant in said cause, and hereby requests the clerk and court to procure the printing of the following documents as a transcript of the record of proceedings and papers, to be sent to the Circuit Court of Appeals on the claimant's appeal in the above-entitled cause.

1. Bill of complaint.
2. Answer of Rathbone Manufacturing Company, defendant.
3. Extract from order appointing receiver.
4. Copy claim as filed.
5. Extracts from report of Kirk E. Wicks, master in chancery, dated May 17th, 1923.
6. Receiver's objections to the report of the master in chancery, John S. Lawrence, dated April 16, 1923, and approved by master in chancery, Kirk E. Wicks, as of the same date.
7. Answer of the Director General of Railroads to the receiver's objections, report of the master in chancery, April 16, 1923.
8. Exceptions of claimant James C. Davis, Director General, to that portion of the report of the master in chancery relating to

claim No. 77 of the Director General of Railroads (Grand Rapids & Indiana Railroad).

9. Stipulation as to insolvency of defendant at the time of filing petition bearing date August 1st, 1923.

10. Order overruling exceptions of claimant in confirming the report of the master in chancery.

11. Petition for appeal of Director General of Railroads, and allowance.

12. Assignments of error.

13. Præcipe.

We hereby agree that the above præcipe states fully the documents necessary for the record on appeal.

KNAPPAN, UHL & BRYANT,
Attorneys for Receiver.
CLAPPERTON & OWEN,
Attorneys for Director General of Railroads.

31 In United States District Court

Order extending time

Filed Nov. 12, 1923

The District Court of the United States for the Western District of Michigan. Southern Division in Equity

WHITE SEWING MACHINE COMPANY ET AL., PLAINTIFFS,
vs.
RATHBONE MANUFACTURING COMPANY, DEFENDANT. } No. 1908

In re James C. Davis, Director General of Railroads (Grand Rapids and Indiana Railroad), claimant and appellant

It appearing that the transcript on appeal in this matter will not be ready to go forward by the return day of the citation herein, it is ordered that the time for filing such transcript be and it hereby is, extended to and including the 24th day of November, A. D. 1923.

C. W. SESSIONS,
U. S. District Judge.

Dated November 12, 1923.

32 In United States District Court

Clerk's certificate

UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, ss:

I, Charles J. Potter, clerk of the United States District Court for the Western District of Michigan, do hereby certify that the within

and foregoing are true and compared copies of all those parts of the files and records in the within-entitled cause, which are specified in the joint præcipe of counsel for the respective parties, omitting such portions thereof as are required to be omitted by rule 15 of the United States Circuit Court of Appeals for the Sixth Circuit, to which I have attached the original citation and the original order extending time for filling the transcript in said cause, the whole constituting the transcript on appeal and made up pursuant to said præcipe of counsel.

Witness my hand and the seal of said district court at the city of Grand Rapids in said district and division, this 16th day of November, in the year of our Lord one thousand nine hundred and twenty-three.

CHAS. J. POTTER,
Clerk.

[SEAL.] By CHAS. L. FITCH,
Deputy.

33 In the United States Circuit Court of Appeals for the Sixth Circuit

Appearance of counsel

Filed Nov. 30, 1923

ARTHUR B. MUSSMAN,
Clerk of said Court:

Please enter my appearance as counsel for the appellant.

CLAPPERTON & OWEN,
Attorneys for Plaintiff.
E. M. DAVIS,
Of Counsel.

In United States Circuit Court of Appeals

Argument and submission

October 9, 1924

This cause is argued by Mr. G. W. Clapperton for the appellant and by Mr. Devere Bryant for the appellee, and is submitted to the court.

34 In United States Circuit Court of Appeals

Decree

Filed Nov. 10, 1924

Appeal from the District Court of the United States for the Western District of Michigan. This cause came on to be heard on

the transcript of the record from the District Court of the United States for the Western District of Michigan and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said District Court in this cause be, and the same is hereby, affirmed with costs.

35 In United States Circuit Court of Appeals, Sixth Circuit

JAMES C. DAVIS, DIRECTOR GENERAL, AGENT United States Railroad Administration (Grand Rapids & Indiana Railroad), appellant vs. THE MICHIGAN TRUST COMPANY, RECEIVER of Rathbone Manufacturing Company, appellee	Appeal from the District Court of the United States for the Western District of Michigan

Decided November 10, 1924

Opinion

Filed Nov. 11, 1924

Before DENISON and MACK, Circuit Judges, and SATER, District Judge.

MACK, Circuit Judge: This is an appeal from the decree of the District Court denying priority to the claim filed by the Director General for freight, demurrage, and switching charges in the distribution of the assets in the hands of the receiver in equity of the Rathbone Manufacturing Company.

The receiver had been appointed, with the consent of the company, on the usual creditor's bill alleging the inability of the company to pay its liabilities in due course. The bill did not allege insolvency in the bankruptcy sense; on the contrary, it alleged, on information and belief, that the going concern value of the defendant's assets exceeded the amount of its liabilities, and that if the assets of the company were properly handled and conserved by a receiver, creditors could probably be paid in full with a possible surplus for
36 stockholders. It is now admitted by stipulation that at the time of the appointment of the receiver the company was in fact insolvent in the bankruptcy sense, in that the aggregate of its property and assets at a fair valuation was then insufficient in amount to pay its debts; it is not admitted or shown, however, that at that time either the company or the plaintiff-creditor knew of such insolvency.

The claim of the Director General for priority is based upon section 3466 of the United States Revised Statutes, which reads as follows:

"Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

In U. S. v. Oklahoma, 261 U. S. 253, the State Bank Commissioner had taken over assets of a bank under a state law permitting such action if he should become satisfied of its insolvency in the sense of its inability to pay its depositors in ordinary course of business and to continue as a going banking concern. The Supreme Court, in denying the claim of the Government for priority in the payment of the assets in the hands of the bank commissioner, said:

"Section 3466, relied on by the Government, is a reenactment and extension of section 65, act of March 2, 1799, 1 Stat. 676; and the same or equivalent language, so far as the question here involved is concerned, is found in earlier statutes. Act of March 3, 1797, c. 20, sec. 5, 1 Stat. 515; also, act of May 2, 1792, c. 27, sec. 18, 1 Stat. 263; act of August 4, 1790, c. 35, sec. 45, 1 Stat. 169; act of July 31, 1789, c. 5, sec. 21, 1 Stat. 42. It has been considered in a number of cases in this court. The claim of the United States to the asserted priority rests exclusively upon the statute. No lien is created by it. It does not overreach or supersede any bona fide transfer of
37 property in the ordinary course of business. It establishes priority which is limited to the particular state of things specified. The meaning of the word 'insolvent,' used in the act and of the insolvency therein referred to, is limited by the language to cases where 'a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment,' etc. Mere inability of the debtor to pay all his debts in ordinary course of business is not insolvency within the meaning of the act, but it must be manifested in one of the modes pointed out in the latter part of the statute which defines or explains the meaning of insolvency referred to in the earlier part. United States v. State Bank of North Carolina, 6 Pet. 29, 35; United States v. Fisher, 2 Cranch, 358, 390; United States v. Hooe, 3 Cranch, 73, 90; Prince v. Bartlett, 8 Cranch, 431, 433; Conard v. Atlantic Insurance Co., 1 Pet., 386, 439; Brent v. Bank of Washington, 10 Pet. 596, 611; Field v. United States, 9 Pet. 182, 201. Where the debtor is divested of his property in one of the modes specified in the act, the person who becomes invested with the title is made trustee for the United States and bound first to pay its debt out of the debtor's property. Beaston v. Farmers' Bank of Delaware, 12 Pet. 102, 133–135.

"The facts set forth in the complaint do not constitute an act of bankruptcy as defined by the Federal bankruptcy act (section 3a).

There is not alleged any conveyance to defraud, or preference through transfer or through legal proceedings, or general assignment for the benefit of creditors. Nor is the case within the meaning of the last clause of section 3a (4) "or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a state * * *" The allegations do not show insolvency within the meaning of section 3466 or of the bankruptcy act.

* * * * * * *

"As insolvency within the meaning of section 3466 was not necessary for the taking of possession by the bank commissioner and is not shown to exist, and as no act of bankruptcy as defined by applicable Federal legislation on the subject of bankruptcies or as defined by any law of Oklahoma is shown to have been committed, and as the debtor bank was not divested of its assets in one of the modes specified in section 3466, the case is not within that section."

38 We proceed to a consideration of the questions raised or suggested by this record:

First. Does the phrase "because of insolvency," as used in the amendment of February 5, 1903, to section 3a (4) of the bankruptcy act, require that the appointment of a receiver in an ordinary creditor's suit be made solely, or at least in part, on the ground of a then existing insolvency as defined in the bankruptcy act, or does it suffice for the act of bankruptcy that such insolvency as so defined then exist irrespective of whether or not the appointment of the receiver was based thereon?

Prior to the amendment by which the last clause of subdivision 4 of section 3a was added thereto, this court held in Vaccaro v. Security Bank of Memphis, 103 Fed. 436 (see, too, 1 Collier Bankruptcy, 13th ed., p. 164, and cases cited), that the appointment of a receiver for an insolvent corporation was not equivalent to the making of "a general assignment for the benefit of creditors," the only act of bankruptcy then specified in subdivision 4. The authorities are in conflict in their construction of the amendment. The earlier cases deem it essential that the appointment be based in whole or in part upon such insolvency. In re William S. Butler & Co., 207 Fed. 705 (C. C. A. 1); in re Valentine Bohl Co., 224 Fed. 685 (C. C. A. 2). The later cases, however, consider the act of bankruptcy established by proof that the debtor was in fact insolvent, as defined in the bankruptcy act, at the time of the appointment of a receiver even though the order of appointment was made pursuant to allegations and findings of insolvency not as so defined but in the sense that the debtor was unable to pay his obligations in due course. Davis v. Pullen, 277 Fed. 650 (C. C. A. 1); Davis v. Miller-Link Lumber Co., 296 Fed. 649 (C. C. A. 5); Hilb v. American Smelting & Refining Co., 275 Fed. 384; Re Sedalia Farmers' Co-operative Packing & Produce Co., 268 Fed. 894. These cases stress the argu-

ment that to hold otherwise would practically annul the amendment; for inasmuch as it is ordinarily and usually unnecessary and uncommon in a creditor's bill to allege more than the debtor's inability to pay his obligations as they mature and the need of a receiver to conserve the assets, such appointments are rarely, if ever, based upon a finding of insolvency as defined in the bankruptcy act. United States v. Oklahoma (supra) is not decisive of this conflict for in that case insolvency within the Bankruptcy act was "not shown to exist."

39 We find it unnecessary in the instant case to decide this question because, assuming the interpretation of this clause of section 3a (4) as held in the later cases to be correct, we come to the consideration of a second question, namely:

Second. By the phrase "cases in which an act of bankruptcy is committed" in R. S., sec. 3466, is the assertion of the Government's claim to priority over other creditors limited, in addition to proceedings in which by action of the State, through insolvency or analogous laws, a debtor is divested of his property for its distribution to his creditors, to those under a Federal bankruptcy act when such exists, or does it extend as well to equity proceedings wherein a receiver has been appointed in circumstances sufficient to make such appointment an act of bankruptcy, even though no creditor has availed himself thereof within the time limit—four months, by section 3b of the bankruptcy act now in force—to throw the debtor into actual bankruptcy under a petition wherein the appointment of such receiver is alleged as the or one of the acts of bankruptcy committed?

Again there is conflict in the authorities. In Davis v. Pullen (supra) and Davis v. Miller-Fink Lumber Co. (supra), in each case reversing the District Court, priority was allowed, while in Equitable Trust Co. v. Conn. Brass & Mfg. Co., 290 Fed. 712 (C. C. A. 2), affirming the District Court, it was denied, in proceedings in equity under a creditor's bill. Davis v. Pullen, though not cited in the opinion, was discussed in the briefs filed in the Equitable Trust Co. case.

For the reasons stated by Judge Rogers at page 718 to 723, and especially by Chief Justice Shaw in Commonwealth v. Phoenix Bank, 11 Metc. 129, 151, quoted at page 722, we concur in the opinion expressed by the Second C. C. A., followed in Kennebec Box Co., Inc., v. O. S. Richardson Corp., 299 Fed. 871, now pending on appeal in the Second C. C. A.

While not decisive thereof, United States Fidelity & Guaranty Company v. Strain, 264 U. S. 570, affirming, without opinion and on the authority of United States v. Oklahoma (supra), Strain v. U. S. Fidelity & Guaranty Co., 292 Fed. 694 (C. C. A. 8), lends support to this conclusion. That case involved not a creditor's bill in equity but a proceeding by the State bank commissioner pur-

suant to State statute under which he placed a State bank examiner in charge of an insolvent bank and since then administered
40 its affairs. It is pointed out in the opinion that the decision in U. S. v. Oklahoma was based upon two distinct grounds; that while, unlike that case, the bank involved in the Strain case was insolvent in the bankruptcy sense when taken in charge, yet like that case, none of the particular acts required by section 3466 as evidencing such insolvency had occurred. Priority under sec. 3466 was denied, primarily for the reasons stated in the last sentence herein above quoted from U. S. v. Oklahoma. See, too, Anderson v. Myers, 296 Fed. 101, 103; certiorari granted 264 U. S. 578.

When the substance of this section was first enacted in 1789, there was no Federal bankruptcy act, and the provision was doubtless intended to give the Government priority in the distribution of a living debtor's assets in proceedings under the State insolvency laws. The provision would of course automatically extend to a bankruptcy case under a Federal statute, unless modified by such act or by some later enactment. Mr. Chief Justice Taft has expressed the view concurred in by two of his brethren that under the present bankruptcy statute the Government's right of priority extends only to claims for taxes. Sloan Shipyards v. U. S. Fleet Corporation, 258 U. S. 549, 574 (see, however, In re Atl. G. & P. S. Co., 289 Fed. 145). The majority of the court in the Sloan Shipyards case rested the decision on other grounds without agreeing or disagreeing with the view expressed by the Chief Justice.

That the Government, even without statutory provision, has a similar priority for taxes in equity proceedings, has been held by Judge Knox in the Southern District of New York, Liberty Mutual Ins. Co. v. Johnson Shipyards Corp., 300 Fed. 952, in that respect distinguishing the Equitable Trust Company case (supra).

The serious doubt raised by the Sloan Shipyards case (supra) as to the Government's priority in bankruptcy proceedings for any claim, except for taxes, but reinforces the arguments adduced against the allowance of the broader priority in equity proceedings available, but not availed of by a creditor to throw the defendant into bankruptcy.

A final question remains:

Third. Does section 10 of the Federal control act (40 Stat.,
41 c. 25, March 21, 1918)[1] prevent the Director General from

[1] "Carriers, while under Federal control, shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law, except in so far as may be inconsistent with the provisions of this act or any other act applicable to such Federal control or with any order of the President. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law; and in any action at law or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal Government. Nor shall any such carrier be entitled to have transferred to a Federal court any action heretofore or hereafter instituted by or against it which action was not so transferable prior to the Federal control of such carrier; and any action which has heretofore been so transferred because of such Federal control or of any act of Congress or official order or proclamation relating thereto shall, upon motion of either party, be retransferred to the court in which it was originally instituted. But no process, mesne or final, shall be levied against any property under such Federal control."

asserting Government priority over other creditors on claims arising out of the governmental war operations of the railroads?

It seems to us clear that this section was intended to subject the Director General in the operation of the various railway systems to the same rules of substantive civil law that had theretofore applied to the carriers. To give the Director General, with his manifold claims arising in the ordinary course of business, priority over all other creditors may work grave injustice. In some cases it might result in the Director General's taking all or nearly all the assets of the debtor. Such priority would give to the Director General a special and privileged position quite inconsistent with the underlying principles of the Federal control act: Director General v. Kastenbaum, 263 U. S. 221; Davis v. McCree, 299 Fed. 142, 146 (C. C. A. 6); and the marked tendencies of our public law; cf. The Pesaro, 277 Fed. 473; The Gloria, 286 Fed. 188. Judicial opinion as well as legislation is examining anew the proper privileges and immunities to be accorded the sovereign state, and in cases not clearly covered by statute or decision the correct solution is not to be found by the application of an abstract formula but by the most careful consideration of the public needs and the practical requirements of law in the modern industrial community.

Giving due regard to the expression of congressional policy of priority, on the one hand, and of a restriction to the rights that the carrier theretofore enjoyed, on the other hand, and on a careful balancing of conflicting interests, we believe that, especially in the light of the policy of the present bankruptcy act as interpreted by the Chief Justice (supra), priority must be denied to the Director General in this case. The question of priority is a matter of civil, compensatory law like the question of tort liability, considered in the Kastenbaum case (supra), and is quite different from the question of the nonliability of the Director
42 General, dealt with in Missouri Pacific R. R. Co. v. Ault, 256 U. S. 554. It is also to be distinguished from the question whether the Director General is subject to the special State and Federal statutes of limitations. Dupont de Nemours & Co. v. Davis, 264 U. S. 456; Davis v. Corona Coal Co., 265 U. S. 19. The fact that the Director General has been declared not to have been subjected to the limitation statutes renders it all the more important that the declared legislative policy subjecting him to the usual rules of substantive civil law be given full effect. While our conclusion differs from that expressed in In re Hibner Oil Co., 264 Fed. 667 (C. C. A. 7); In re Tidewater Coal Exchange, 280 Fed. 648 (C. C. A. 2), as well as in Davis v. Pullen and Davis v. Miller-Link Lumber Co. (supra), in none of these cases does the court's attention appear to have been drawn to section 10 of the Federal control act.

Affirmed.

43 In United States Circuit Court of Appeals

Petition for and order allowing appeal

Filed Jan. 14th, 1925

The above-named plaintiff, James C. Davis, Director General, agent U. S. Railroad Administration, considering himself aggrieved by the order entered on November 11th, 1924, in the above-entitled proceeding, doth hereby appeal from the said order to the Supreme Court of the United States and prays that this, his appeal, may be allowed and that a transcript of the record and proceeding and papers upon which said order was made, duly authenticated, be sent to the Supreme Court of the United States.

CLAPPERTON & OWEN,
Attorneys for Plaintiff and Appellant.
Business address 1019 Michigan Trust Building,
Grand Rapids, Michigan.

Dated January 8th, 1925.

And now, to wit, on the 13th day of January, A. D. 1925, it is ordered that the appeal be allowed as prayed for.

A. C. DENISON,
Circuit Judge.

44 In United States Circuit Court of Appeals

Assignment of errors

Filed Jan. 14th, 1925

And now comes James C. Davis, Director General, agent U. S. Railroad Administration, plaintiff in the above-entitled cause, and files the following assignments of error upon which he will rely upon his prosecution of appeal in the above-entitled cause from the decree made by this honorable court on the 11th day of November, 1924:

(1)

The U. S. Circuit Court of Appeals, Sixth Circuit, erred in its decree of November 11th, 1924 in which it affirmed the order of the District Court of the United States for the Western District of Michigan, Southern Division, of September 15th, 1923, in which the said District Court overruled the exceptions of the said James C. Davis, claimant, to the report of the master in chancery, and confirmed the report of the master in chancery, and the said District Court of the United States for the Western District of Michigan, Southern Division, erred in its said order of September 15th, 1923, for the following reasons:

(1) That the claim of the said James C. Davis, Director
45 General, against the said Michigan Trust Company, receiver of Rathbone Manufacturing Company, was and is a preferred claim within the meaning of section 3466 of the Revised Statutes of the United States, and should have been allowed as a preferred claim, with priority as to payments over the ordinary claims filed against said estate.

(2) That the said claim of the said James C. Davis, Director General, is a preferred claim within the meaning of the said section 3466 of the Revised Statutes of the United States for the reason that at the time of the filing of the bill of complaint in the suit of the White Sewing Machine Company against the Rathbone Manufacturing Company, out of which suit this claim arises, the said Rathbone Manufacturing Company was insolvent and has committed an act of bankruptcy within the meaning of said section 3466, in that because of insolvency a receiver was put in charge of the said Rathbone Manufacturing Company.

(3) That at the time of the filing of the bill of complaint in the said suit of the White Sewing Machine Company versus the said Rathbone Manufacturing Company the said Rathbone Manufacturing Company was insolvent and committed an act of bank-
46 ruptcy within the meaning of said section 3466, U. S. Revised Statutes, in that, being insolvent, it applied for a receiver for its property.

(4) That the said Rathbone Manufacturing Company by its answer to the said bill of complaint and its consent to the appointment of a receiver, as prayed in said bill of complaint of the White Sewing Machine Company, made a voluntary assignment of all its property for the benefit of creditors within the meaning of the said section 3466, Revised Statutes of the United States.

(5) That the said James C. Davis, asserted priority for the sum of five hundred twenty-seven dollars and seventy-four cents ($527.74) of the claim filed for the reason that the merchandise therein referred to was converted by the said Rathbone Manufacturing Company and that this claim of preference was not passed upon by the master or by the said District Court, although said claimant is entitled to preference because of the fraudulent and unlawful acts of the said Rathbone Manufacturing Company in converting to its use this property within its custody.

Wherefore the appellant prays that said decree be reversed
47 and that the said United States Circuit Court of Appeals for the Sixth Circuit be ordered to enter a decree reversing the decision of the lower court in said cause.

CLAPPERTON & OWEN,
Attorneys for Appellant,
1019 Michigan Trust Building, Grand Rapids, Michigan.
Dated January 8th, 1925.

48 In United States Circuit Court of Appeals

Clerk's certificate

I, Arthur B. Mussman, clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of James C. Davis, Director General, etc., vs. The Michigan Trust Co., rec. of The Rathbone Mfg. Co., No. 4028, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof, together with the original citation.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said court, at the city of Cincinnati, Ohio, this 19th day of January, A. D. 1925.

[SEAL.] ARTHUR B. MUSSMAN,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

(Indorsement on cover:)

File No. 30862. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 897. James C. Davis, Director General, agent U. S. Railroad Administration (Grand Rapids and Indiana Railroad), appellant, vs. Michigan Trust Company, receiver of Rathbone Manufacturing Company. Filed February 10th, 1925. File No. 30862.

Supreme Court of the United States

Order allowing certiorari

Filed April 13, 1925

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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